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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,101	11/17/2003	Kent D. Cedola	MS1-400USC1	3266

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EXAMINER
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HALIM, SAHERA

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/715,101

Applicant(s)

CEDOLA, KENT D.

Examiner

Sahera Halim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

1. Claims 1-17 are pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kennedy et al., U.S. Pat. No. 5490209.

4. Reference to claim 1, Kennedy teaches in a computer system having a host computer coupled to a client computing device via a serial connection, an operating system embodied on a computer-readable medium at the host computer, comprising (fig. 1 and col. 1, lines 29 – 42):

computer-executable instructions to listen at a first baud rate for a predefined message sent from the client computing device (abstract and col. 1, (col. 2, lines 26-50) ; and

computer-executable instructions to listen at a second baud rate for the predefined message in an event that the predefined message is not received at the first baud rate (col. 2, line 26 – col. 3, line 12).

5. Regarding claim 2, Kennedy teaches executable instruction to listen at the first baud rate for a predetermined period (col. 5, lines 1-34).

6. As to claim 3, Kennedy discloses computer executable instructions to listen at the second baud rate for the predefined message in an event that error characters not forming part of the predefined message are received at the first baud rate (col. 4, lines 19-67).

7. Reference to claim 4, Kennedy teaches executable instructions to cache the second baud rate in an event that the predefined message is received at the second baud rate (col. 2, lines 13-24).

8. Regarding claim 5, Kennedy teaches executable instructions to look up the first and second baud rates in a table (col. 2, lines 1-16).

9. As to claim 6, Kennedy discloses a processor; and the operating system of claim 1, embodied on the computer medium and executed on the processor (fig. 1 and col. 1, lines 29 – 42, abstract and col. 1, col. 2, lines 26-50 and col. 2, line 26 – col. 3, line 12).

10. Reference to claims 7 and 9, Kennedy teaches inn a computer system having a host computer coupled to a client computing device via a serial connection, a computer program module embodied on a computer-readable medium for execution at the host computer, comprising:

computer-executable instructions to listen at a first baud rate at which a predefined message might be sent from the client computing device over the serial connection col. 2, lines 26-34 and col. 2, lines 36-51); and

computer-executable instructions to switch to listening at a second baud rate if one of the following events occurs: (1) characters not included in the predefined message are received, or (2) a predetermined timeout period expires without successful receipt of the predefined message (col. 4, lines 19-67 and (col. 5, lines 1-34).

11. Regarding claim 8, Kennedy discloses claim 7, further comprising computer-executable instructions to cache one of the first and second baud rates at which the predefined message is successfully received (col. 2, lines 13-24).

12. Reference to claim 10, computer-implemented method, comprising: listening at a first of multiple baud rates for a predefined message to be sent by a client computing device over a serial connection to a host computer; in an event that characters not included as part of the message are received or the message

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is not detected within a predetermined time period, listening at a second of the baud rates for the message (col. 2 line 13 –col. 3, line 4).

13. Reference to claim 11, Kennedy discloses a computer-implemented method of claim 18, wherein the listening steps are repeated until a baud rate is found that allows receipt of the message (col. 2 line 13 –col. 3, line 4).

14. As to claim 12, Kennedy teaches a computer-implemented method of claim 19, further comprising storing the baud rate that enables receipt of the message (col. 2 lines 13-51).

15. Reference to claim 13, Kennedy teaches a computer-implemented method of claim 18, further comprising storing the multiple baud rates in a table (col. 2, lines 1-12).

16. As to claim 14, Kennedy teaches a computer-implemented method, comprising: listening to a serial connection at a baud rate for a predefined message from a client computing device; and automatically adjusting the baud rate in an event that the message is not detected (col. 2, lines 26 – 51).

17. As to claim 15, Kennedy discloses a computer-implemented method of claim 22, wherein the adjusting comprises cycling through a set of predetermined baud rates (col. 2, lines 26 – 51, col. 4 line 1-18).

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18. Reference to claim 16, Kennedy teaches a computer-implemented method of claim 22, further comprising caching the baud rate at which the message is detected (col. 4, lines 45-59, col. 2, lines 36- 51).

1. Reference to claim 17, in a computer system having a host computer coupled to a client computing device via a serial connection and employing a Unimodem null serial protocol to establish a connection between the host computer and the client computing device, a computer-implemented method, comprising:

(a) storing multiple baud rates at which a predefined message may be sent from the client computing device over the serial connection (col. 4, lines 1-18);

(b) selecting one of the baud rates (col. 4, lines 19- 44);

(c) listening at the selected baud rate for the predefined message (col. 4, lines 19- 44);

(d) in an event that the predefined message is not received, selecting another of the baud rates (col. 4, lines 31-44); and

(e) repeating steps (c) and (d) until a baud rate is found that enables receipt of the predefined message (col. 2, lines 13 – 67).

### ***Response to Arguments***

2. Applicant's arguments filed October 13, 2004 have been fully considered but they are not persuasive.

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3. In response to applicant's arguments, the recitation "the operating system" (the operating system of claim 1) has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

4. In the remarks, the applicant argues that Kennedy teach a predefined message and Kennedy does not disclose a "predefined message". Kennedy does disclose a predefined message (see col. 2, line 26 – 34 and col. 4, line 18 – 29). The predefined message in the above claims is the same as the potentially valid character in Kennedy's invention. There is a difference between a message and a character in terms of their length. However, the length of the message is not a factor in both inventions. Even though, they might have different lengths, but they still serve the same purpose, detecting the baud rate. The recited data and respective bits are the message in Kennedy.

5. Moreover it is argued that Kennedy does not teach listening to the baud rate. However, the applicant recognizes correctly on page 8 of the Remarks that



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a carriage return is a character that is expected to be transmitted. Expecting and listening to bits to detect the baud rate are the same concept.

6. In response to arguments in reference to claim 2, the examiner asserts that Kennedy does disclose "to listen at the first baud rate for a predetermined period" (See col. 5, lines 1-34). The original baud rate is the first baud rate in Kennedy. Kennedy discloses in abstract "When the call is terminated, the baud rate reverts to its default settings" (See abstract). Therefore, the predetermined period is directed to the default or first baud rate.

7. Response applicant's arguments in regards to claim 3 that Kennedy does not disclose a "predefined message", please refer to numeral 4 of the Response to Arguments.

8. In reference to claim 4, it is argued that Kennedy does not teach "cache the second baud rate". The examiner disagrees, Kennedy teaches "the baud rate entries of the table are stored in sequential addresses in memory ", the baud rate entries include the second baud rate.

9. Regarding claim 7, the applicant argues that Kennedy does not disclose to switch to a second baud rate if characters not included in the predefined message are received. The examiner disagrees. Kennedy discloses to switch to a second baud rate if characters not included in the predefined message are

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received (col. 2, line 26 – 51). Kennedy teaches that if the received data bit pattern do not match with the potential valid character (predefined message) to switch to a second baud rate. For something to match, it has to be the same characters or bits. If there is more or less or different characters or bits, they will not match and an error occurs. Thus the baud rate changes to the next baud rate. Moreover, the applicant argues that Kennedy does not disclose to switch to a second baud rate if the characters not included in the predefined message are received or if the message is not detected within a predetermined time period. Kennedy discloses to switch to a second baud rate if the characters not included in the predefined message are received or if the message is not detected within a predetermined time period as explained above. Since the applicant is claiming one or the other, Kennedy's invention meets claimed limitation.

10. In response to applicant's arguments regarding claim 10, please refer to numeral 4 and 5 of the Response to Arguments.

11. In response to applicant's arguments in reference to claim 14, please refer to numeral 4 of the Response to Arguments.

12. In response to applicant's arguments that Kennedy does not teach "listening at a selected baud rate for a predefined message". Please refer to numeral 4 of the Response to Arguments.

***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sahera Halim whose telephone number is (703) 305-8054. The examiner can normally be reached on M-F from 8:30-5:00.

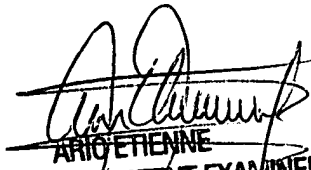
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sahera Halim  
Patent Examiner  
AU: 2157

December 13, 2004

  
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